

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Rules and Policies Concerning	)	MM Docket No. 01-317
Multiple Ownership of Radio Broadcast	)	
Stations in Local Markets	)	
	)	
Definition of Radio Markets	)	MM Docket No. 00-244
	)	

TO: THE COMMISSION

**COMMENTS OF HISPANIC BROADCASTING CORPORATION**

Hispanic Broadcasting Corporation ("HBC"), by its attorneys and pursuant to Sections 1.415 and 1.419 of the Commission's Rules, submits the following comments in the above-captioned proceeding on matters raised by the Commission in its Notice of Proposed Rule Making and Further Notice of Proposed Rulemaking, FCC 01-329, released November 9, 2001 ("NPRM").

HBC is the largest operator of Spanish-language radio stations in the United States. It is a publicly-held corporation whose stock is traded on the New York Stock Exchange. It is the licensee of radio stations in many of the nation's largest markets, as detailed more fully below.

Recognizing the keen interest expressed by the Commission for more than mere argument and rhetoric in support of its position for elimination or relaxation of the radio

local multiple ownership rules, HBC joined with Infinity Broadcasting Corporation ("Infinity", also hereinafter "Viacom", see below) and Clear Channel Communications, Inc. ("Clear Channel") to commission studies by Professors David Pritchard of the University of Wisconsin-Milwaukee and Jerry A. Hausman of the Massachusetts Institute of Technology to establish that consolidation of ownership on a national level in the radio broadcasting industry -- triggered by the elimination of the national multiple ownership caps and the relaxation of the local multiple ownership rules in the Telecommunications Act of 1996 ("1996 Act"), and much derided in certain circles since then -- has in fact not diminished in any way the diversity of viewpoints and sources available to the American public and, indeed, has maintained and increased such diversity, particularly as far as radio service to the Spanish-speaking segment of the radio audience is concerned. Moreover, there is no evidence that there has been any harm from consolidation as far as economic competition (*i.e.*, radio advertising rates) is concerned. HBC suggests that the Commission take steps to disengage itself from the overlapping, duplicative, and therefore wasteful enterprise of assessing economic competition in the context of radio mergers and acquisitions in competition, so to speak, with the Department of Justice.

These comments address several aspects of the Commission's Notice of Proposed Rulemaking:

- First, we briefly review the Statements of Professors Pritchard and Hausman and hereby expressly incorporate them by reference as they are attached in full to the contemporaneously-filed Comments of Viacom Inc. (parent of Infinity which has partnered with Clear Channel and HBC thus far in the proceedings);

- We then comment on the facts concerning the development of HBC's national array of local stations, primarily in major U. S. markets, and how the consolidation of ownership which HBC has participated in has led not to a decrease in localism and format diversity, but instead to an increase in local station autonomy over local news and public affairs programming and in an dramatic increase in a variety of sub-formats to meet the programming tastes, needs, and desires of the Spanish-speaking listeners to HBC's stations across the land; and
- Finally, we respectfully submit our thoughts on how the Commission might act to eliminate or at least decrease the unnecessary and wasteful ("inefficient", in economic parlance) duplication of review of economic competition concerns by the FCC and the Antitrust Division of the Department of Justice.

#### Brief Summary of Expert Testimony

Professor David Pritchard's Statement provides empirical data regarding the increase in outlets in news and information about local events over the past 60 years in Syracuse, New York; Florence, South Carolina; Rockford Illinois; New York, New York; and Lisbon, North Dakota. Professor Pritchard concludes that the rate of increase of outlets has increased generally over the past 60 years and, significantly, that the rate of increase has accelerated since the passage of the 1996 Act. Hence, the public in markets of all sizes has enjoyed increased access to media outlets.

Professor Jerry A. Hausman's Statement I explains his empirical examination of the effects of radio station consolidation subsequent to the 1996 Act on radio advertising prices, and sets forth his conclusion that consolidation has not had a significant impact on such rates. Professor Hausman's Statement I also explains his empirical examination of the effects of radio station consolidation on radio format diversity, and sets forth in his conclusion that consolidation has increased such format diversity. (This conclusion squares with HBC's own experience as set forth in detail below.)

Professor Hausman's Statement II addresses the issue of the definition of the relevant product market which is raised in the NPRM at Paragraphs 41-21. He concludes (contrary to the view taken by the Department of Justice) that radio is not a separate market and that at least three services compete within the relevant antitrust product market to allow advertisers to reach their target audiences--*i.e.*, television, newspapers, and radio.

Professor Hausman's Statement II also explains that radio is a differentiated market (with stations using different formats to appeal to different audiences), and there is no barrier to format change. Accordingly, Professor Hausman concludes that any attempt by an entity to exert market power would be defeated by other stations changing formats, and therefore any concern over HHI or other indicia of radio market share is misplaced.

The application of these studies to HBC's particular history in developing the nation's largest radio operation serving the Hispanic audience follows.

HBC's Policy Is for Local News/Public Affairs Directors  
to Determine the Content of Station News and Public Affairs Programming

The content of news and public affairs programming on HBC stations is determined on a local basis, and is not dictated or even directed by a central HBC controlling authority. As a matter of fundamental corporate policy, HBC believes that the production of news and public affairs programming on its stations can best be formulated on a local (market-by-market) basis, and therefore places the responsibility for the contents of its stations' day-to-day news and public affairs programming in the hands of the professional News or Public Affairs Directors of the stations in each market (acting under the general supervision of the stations' General Managers), with the expectation that they will use their good judgment to program the stations appropriately, with a view toward meeting the needs, tastes, and interests of the local listening public. With the rarest of exceptions, neither the upper management of HBC (headquartered in Dallas, Texas) nor any other non-local HBC personnel play a significant role in the news and public affairs programming of any HBC station. HBC management does not, in the ordinary course, send out written messages or otherwise communicate with the stations in general or any station in particular regarding how local, regional, national, or international issues are to be handled by the local station.

Similarly, HBC News or Public Affairs Directors do not generally consult even with other HBC News or Public Affairs Directors regarding the news and public affairs programming on their own stations. Notably, the news and public affairs programming at

HBC's two news/talk AM stations in Miami, Florida (WQBA and WAQI), is under the direction of two separate News Director/Coordinators, each of whom is responsible for the news/public affairs programming on one station. Because the AM stations appeal to different segments of the Spanish-language radio audience in Miami, the public affairs commenters on the stations often take very different--and frequently diametrically opposite--positions on major public issues. In HBC's view, this is as it should be, and is further reflective of HBC's corporate policy that the news and public affairs discussion programming on HBC's stations should be determined on a local basis, and with minimal input by centralized HBC management. Based on the many years of broadcast experience of HBC's senior management, responsibility for the news and public affairs programming of HBC's stations is given to the stations' professional News and Public Affairs Directors, who are expected to present station news and public affairs programming based on his/her best judgment of the local needs and interests of the listeners to each station, subject of course, to review and control by the station General Manager and, ultimately, by senior HBC Management.

HBC Carefully Designs the Formats  
of Its Stations to Serve Distinct  
Sub-Segments of the Hispanic Radio Market

HBC is the nation's largest Spanish language radio broadcast licensee. Through its subsidiaries, HBC operates a total of 56 stations in 13 major markets (*i.e.*, New York, Los Angeles, San Francisco, San Diego, Miami, Chicago, Houston, Dallas/Ft Worth, San Antonio, El Paso, and McAllen/Harlingen, Phoenix, and Las Vegas.) Just as the licensees of major English language radio stations spend considerable time, attention and

financial resources in researching their markets and adopting program formats which appeal to particular segments of the English language audience, so too does HBC for its generally Spanish-speaking audiences. HBC is keenly aware of the ever-changing differences in the tastes and interests of the various sub-segments of the Hispanic radio audience in each of its markets and, like the licensees of English language stations, it spends great effort (and expense), on an on-going and systematic basis, researching the tastes of the sub-categories which comprise the overall Hispanic radio audience. HBC uses its accumulated experience, and the results of its on-going research, to design and implement program formats which address the tastes and interests of the various sub-segments of the stations in the markets which it serves.

In addition to its news/talk stations, HBC uses six general types of Spanish-language music program formats at its stations (although the “basic” program formats are adjusted from market-to-market to take into account subtle differences in taste in each market):

1. REGIONAL MEXICAN – Targeted to listeners of Mexican origin, primarily in HBC’s western and central U.S. markets. Even within those markets the stations’ programming varies significantly, as listeners with roots in different parts of Mexico may have dramatically different music and entertainment tastes. For example, the “regional” blend in Los Angeles is quite different than in Chicago or Houston. In Houston, HBC offers two different Regional formats serving different groups of Mexican-origin listeners in the market. Depending on the music blend used, this format can appeal either mainly to males or females.
2. TEJANO – In some Texas markets, the “Tex Mex” lifestyle has yielded a hybrid format that mixes Spanish language music with announcers who speak “Spanglish,” a combination of English and Spanish (often spoken in public in these markets). This music blend is markedly different from the Regional format, even though it includes some music segments which are popular with Mexican-origin listeners.

3. ROMANTICA – Also known as “Spanish Adult Contemporary”, or the “Amor” or “K-Love” format. This format appeals more to females and is quite similar to the English Soft Adult Contemporary format. The age target of Romantica stations is affected by the blends of pop and ballad songs used. For instance, KLVE in Los Angeles offers a music blend that is significantly different from KOVE in Houston, even those both stations are known as “K-Love”. The stations each have different audience ratings strengths.
4. TROPICAL – Listeners from Caribbean origins (Puerto Rico, Cuba, Dominican Republic), Central America and South America exhibit significantly different music tastes than Mexican-origin listeners. HBC has tailored formats based on music styles such as salsa and merengue, and these music styles have numerous sub-groups for markets with these population characteristics. No two HBC tropical stations are alike, as shown by the differences in the Puerto Rican and Dominican flavor of HBC’s New York tropical station and the Cuban flavor of HBC’s Miami tropical station.
5. RECUERDO – As it happened in general market radio, an aging population in HBC’s target markets has a taste for the great songs of the past, hence the Spanish Oldies format--“Recuerdo”. This is an excellent example of how fragmentation in general market radio over the past several decades is now occurring in Spanish language radio.
6. RHYTHMIC/CONTEMPORARY HITS – Not all Hispanic listener groups are Spanish-dominant, especially younger listeners. HBC is responding to this group with Contemporary Hit Radio, especially designed for Anglicized Hispanics, many of whom currently use general market radio stations for partial satisfaction of their programming needs. As the result of HBC’s first two efforts in CHR (“The Beat” in San Antonio and “The Party” in Houston), HBC perceives distinct differences between CHR listeners in these Texas markets, which indicate the need for a custom-tailored product, even within this format niche.

The following list of HBC’s stations and their formats (as of March 20, 2002, and subject to change) demonstrates that within each market, HBC utilizes different formats, and often several different formats, to reach different segments of the Hispanic radio market.



<b><u>Market<sup>1</sup></u></b>	<b><u>Station</u></b>	<b><u>Station Format</u></b>	<b><u>Primary Demographic Market</u></b>
<u>Los Angeles</u>  (Simulcast with KRCD)  (Simulcast with KRCD)	KLVE(FM)	Romantica	A25-54
	KSCA(FM)	Regional Mexican	A25-54
	KTNQ(AM)	Recuerdo	A35+
	KRCD(FM)	Recuerdo	A35+
	KRCV(FM)	Recuerdo	A35+
<u>New York</u>	WCAA(FM)	Tropical	A18-34
	WADO(AM)	News/Talk	A35+
<u>Miami</u>	WAMR(FM)	Romantica	A25-54
	WRTO(FM)	Tropical	A18-34
	WAQI(AM)	News/Talk	A35+
	WQBA(AM)	News/Talk	A35+
<u>Chicago</u>	WOJO(FM)	Regional/Mexican	A18-49
	WIND(AM)	News/Talk	A25-54
	WLXX(AM)	Tropical	A18-54
<u>Houston</u>  (Simulcast with KPTY) (Simulcast with KLAT(AM))	KLTN(FM)	Regional Mexican	A18-49
	KOVE(FM)	Romantica	A18-49
	KPTY(FM)	Rhythmic	A25-54
	KLTO(FM)	Rhythmic	A25-54
	KLAT-FM	News/Talk	A18-49
	KLAT(AM)	News/Talk	A25-54
	KRTX(AM)	News/Talk	A25-54
	KQBU(FM)	Regional Mexican	A18-49
<u>San Francisco/San Jose</u> (Simulcast with KSOL)	KSOL(FM)	Regional Mexican	A25-54
	KZOL(FM)	Regional Mexican	A25-54
<u>Dallas/Fort Worth</u>  (Simulcast with KDXX)  (Simulcast with KDXX-FM)	KLNO(FM)	Regional Mexican	A18-49
	KHCK(FM)	Tejano	A18-49
	KDXT(FM)	Romantica	A18-49
	KDXX-FM	Romantica	A18-49
	KDOS(FM)	Romantica	A18-49
	KESS(AM)	Spanish Oldies/Sports	A25-54
	KDXX(AM)	Romantica	A18-49

<sup>1</sup> Actual city of license may differ from the metropolitan market served.

<u>San Antonio</u>	KXTN-FM	Tejano	A25-54
	KROM(FM)	Regional Mexican	A25-54
	KXTN(AM)	Tejano	A25-54
	KCOR(AM)	Recuerdo	A35+
	KBBT(FM)	Rhythmic	A18-34
	KCOR(FM)	Romantica	A18-49
<u>McAllen/Harlingen</u>	KGBT-FM	Regional Mexican	A25-54
	KIWW(FM)	Tejano	A25-54
	KGBT(AM)	News/Talk	A25-54
<u>Phoenix</u> (Simulcast with KHOT)	KHOT(FM)	Regional Mexican	A25-54
	KHOV(FM)	Regional Mexican	A25-54
	KOMR(FM)	Romantica	A18-34
	KMRR(FM)	Romantica	A18-34
	(Simulcast with KOMR)		
	(Simulcast with KOMR)		
<u>San Diego</u>	KLQV	Romantica	A25-54
	KLNV(FM)	Regional Mexican	A18-49
<u>El Paso</u> (Simulcast with KBNA-FM)	KBNA-FM	Contemporary	A25-54
	KBNA(AM)	Contemporary	A25-54
	KAMA(AM)	Spanish Oldies	A35+
<u>Las Vegas</u>	KISF(FM)	Regional Mexican	A18-49
	KLSQ(AM)	Recuerdo	A25-54
	KQMR(FM)	Romantica (proposed)	A18-49

Subsequent to the formation of HBC by the merger of Tichenor Media System, Inc. (“Tichenor”) and Heftel Broadcasting Corporation (“Heftel”) in February 1997, HBC has acquired a number of radio stations in several major markets. In virtually every case, prior to acquisition by HBC, the station was broadcasting in English. In each case, prior to acquisition, HBC made a careful assessment of the unmet programming interests of the Hispanics in the market, and designed a program format to respond to those unmet programming programming interests. In all but one case, the acquired station was converted from an English language format to a Spanish language format, to meet the tastes of a significant number of Hispanics in the market.

The one exception to HBC's general policy of acquiring stations and designing a Spanish language format to meet unmet needs of the Hispanic community is instructive for purposes of the Commission's assessment of the contribution to diversity that can come about through consolidation. The exception was Station KBBT(FM) in the San Antonio market. Tichenor (a merger partner in HBC), has for many years been the licensee of four Spanish language stations in the San Antonio market, which served a variety of segments of the Hispanic market. In anticipation of its purchase of KBBT in 2000, HBC conducted audience research in San Antonio to determine the most desirable music format for the station subsequent to acquisition. HBC's research suggested that there was an unmet need for programming designed for younger, "Anglicized" Hispanics, who desired to hear a certain style of music in English. Accordingly, when HBC acquired the station it implemented an entirely English-language format, but one which specialized in music which would be of interest to young people from Hispanic backgrounds. Such a format was, of course, quite out of the ordinary for HBC, as at the time KBBT was acquired, HBC operated no English-language stations. Nevertheless, HBC decided to implement the new, English language format, of rhythmic/contemporary hits. The format has been a success. More importantly for the Commission's purposes in this context, the foregoing example illustrates that because of HBC's background, experience, flexibility and financial ability, it is able to use sophisticated audience research techniques to recognize unmet needs in the Hispanic radio market and, through acquisitions, to acquire stations and implement new formats which are specifically targeted to meet those unserved needs of Hispanics--even if, as in the case of KBBT, that need is for

programming which differs markedly from programming with which HBC had experience, in this case, programming in the English language.

Another illustration of the benefits of diversification occurred in February 1997, when Tichenor merged with Heftel. Prior to the merger, Heftel's Station WLXX(AM) in Chicago broadcast a Spanish language format which was designed to appeal to persons of Mexican heritage. At the time, Tichenor's existing stations in the Chicago market (Stations WIND and WOJO) also broadcast in Spanish, with a format directed to people of Mexican heritage. Upon completion of the merger, HBC changed the format of Station WLXX and implemented a program format which was directed to people of Puerto Rican heritage, thereby increasing the scope of programming available to Chicago's Hispanic audience.

### Conclusion

HBC hopes that the studies submitted by Professors Pritchard and Hausman (which, as noted, Infinity, Clear Channel and HBC underwrote) and these Comments will be of assistance to the Commission in deciding the direction its radio multiple ownership rules should now take. The 1996 Act eliminated the national cap on radio station ownership, and the Commission and/or the federal and state antitrust agencies are fully equipped to deal with any market abuses which might arise from national-level market power. This proceeding is, therefore, appropriately limited to consideration of the local radio multiple

ownership limits in the wake of the action of Congress in the 1996 Act setting numerical limits for ownership of AM and FM radio stations in markets of varying size.<sup>2</sup>

The Commission will have in this proceeding a record which will support elimination or at least relaxation of the local radio multiple ownership rule, but it will undoubtedly address the question it faced originally when it was called upon to implement this aspect of the 1996 Act, *i.e.*, whether the levels of ownership specified in the 1996 Act represented a precise mandate, or a ceiling, or a floor. The Commission concluded then to adopt as its rule the precise levels of ownership by market size provided in the 1996 Act, and notwithstanding the disappointment expressed by some about the level of national radio station consolidation, the levels of local concentration have proven to be satisfactory, if not on the modest side. HBC does not envy the Commission's difficult policy/political judgment this proceeding will require, but there can be no question that the detailed analyses of Professors Pritchard and Hausman would support at least a

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<sup>2</sup> HBC has not commented on the issue raised by the Commission in the NPRM about the definition of "market" for purposes of administering the local radio multiple ownership rules. First, HBC believes Congress made quite clear its mandate that the Commission should continue to apply the "contour overlap" standard in use on the date of enactment of the 1996 Act. Second, HBC has not had any difficulty applying that overlap standard in assessing possible acquisitions of additional stations in markets where it has existing radio licenses. Nevertheless, HBC would support any reasonable change in the definition so long as any such change is (1) prospective only, and (2) capable of clear and unambiguous application.

relaxation of the current limits, whether by Commission rule or by way of a Commission recommendation to Congress.

Respectfully submitted

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March 27, 2002